SUPREME COURT, U.S.
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No. 94-972

In The

Supreme Court of the United States

October Term, 1994

TRI-STATE MACHINE, INC.,

Petitioner,

vs.

NATIONWIDE LIFE INSURANCE COMPANY,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

RESPONSE TO MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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Now comes Respondent, Nationwide Life Insurance Company, pursuant to Rule 21.4 of the Supreme Court Rules, and herein files its response to the National Association of Insurance Commissioners' ("NAIC") Motion for Leave to File a Brief of Amicus Curiae in Support of Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit. For the reasons that follow, Respondent submits that the Court should deny NAIC's Motion for Leave.

At issue in this case is whether ERISA preemption should apply to the claims of the plan sponsor of an ERISA employee welfare benefit plan who seeks relief against a plan fiduciary of that plan. Specifically, Petitioner Tri-State Machine Company, the plan sponsor, seeks state law remedies against Respondent, as plan fiduciary, for misadministration of plan benefits under the subject employee welfare benefit plan, breach of duty with regard to administration of plan benefits, negligence, breach of contract and bad faith. All claims alleged by the plan sponsor directly implicate the manner in which the plan fiduciary administered claims.

Based upon the complaint filed by Petitioner in the trial court, The United States District Court for the Northern District of West Virginia determined that Petitioner's claims were preempted by ERISA and not saved therefrom. The Fourth Circuit Court of Appeals agreed with that determination. *Tri-State Machine v. Nationwide Life Insurance Company*, 33 F.3d 309 (4th Cir. 1994). Both courts below consequently determined that Petitioner was not entitled to the state law remedies it seeks against Respondent.

Amicus, NAIC, seeks leave to file its brief in support of Tri-State's Petition for Writ of Certiorari. The argument made by the NAIC provides a cursory analysis of the ERISA preemption provisions and West Virginia's Unfair Trade Practices Act. Like the brief of the other amici curiae, the Attorney General and the Insurance Commissioner of the State of West Virginia, the brief of NAIC does not bring to the attention of the Court relevant matter that has not already been brought to its attention by the parties. NAIC's amicus brief, like the previous amicus briefs in support of Tri-State's Petition, do not in any way raise issues which should be considered by the Court in this case.

The NAIC brief does nothing to shed light on the issues central to this case. NAIC does not discuss the sweeping scope of ERISA preemption as defined by Congress. Without addressing this Court's numerous decisions elaborating on the broad scope of ERISA preemption, amicus instead discusses its perception of the effect of the McCarran-Ferguson Act on ERISA preemption, ignoring the fact that the McCarran-Ferguson Act was passed thirty years prior to the enactment of ERISA. In this regard, amicus would have the court ignore the mandate of federal preemption of ERISA claims, defined both by Congress and this Court, in favor of providing state law remedies to a party where that party's claims are clearly governed by ERISA.

NAIC, like the other amici who have filed briefs in support of the Petition for Writ of Certiorari, glosses over the sound and consistent application of the ERISA preemption analysis which this Court has applied in numerous cases for more than a decade. (See e.g. *Shaw v.*

Delta Airlines, Inc., 463 U.S. 85 (1983); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *FMC Corp. v. Holliday*, 498 U.S. 52 (1990)). Amicus brings no relevant matter which has not already been brought to the court's attention by the parties with regard to the preemption analysis.

Rule 37 of the Supreme Court Rules provides that an amicus brief which does not serve the purpose of bringing relevant matter to the attention of the Court that has not already been brought to its attention is not favored. Moreover, Rule 37 provides that a motion for leave to file a brief amicus curiae is not favored when consent has been refused. Respondent refused to give consent to NAIC and the Commissioner of Insurance of the State of West Virginia for the filing of their respective amicus briefs. Consent was refused to NAIC on the basis that the issues germane to a decision on the Petition for Writ of Certiorari have already been brought to the Court's attention.

Because the issues which Petitioner has brought before the Court have been addressed without the assistance of amicus, because the amicus brief does not serve the purpose of bringing relevant matter to the attention of the Court that has not already been brought to the Court's attention, and because Respondent has refused consent to the filing of the amicus brief, Respondent

respectfully submits that the Court should deny NAIC's Motion for Leave to File Brief of Amicus Curiae.

Respectfully submitted,

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